

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 29795 of 2004(V)

AGAINST THE ORDER IN EA.773/04EP.94/01 IN
OS.17/1967 of I ADDL.M.C.,TRIVANDRUM
.....

PETITIONER:

PUSHPALATHA, D/O.THANKAMANY,
TC.4/113(17), KANNATUMoola,
JKURAVANKONAM, KOWADIAR P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.R.GOPU

RESPONDENT:

C.P.DAMODARAN, PRESIDENT,
PRATHYAKSHA RAKSHA DEVA SABHA (PRDS),
VALIYATHANIKKAN, IRAVIPEROOR, THIRUVALLA TALUK,
PATHANAMTHITTA.

BY ADV. SRI.S.V.BALAKRISHNA IYER(SR.)
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28/05/2007 ALONG WITH WPC NO. 33795 OF 2004, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 29795/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE COMMISSION REPORT IN O.S.NO.17/1967.

EXT.P2: TRUE COPY OF THE PLAN SUBMISSION BY THE COMMISSIONER IN O.S.NO.17/67.

EXT.P3: TRUE COPY OF THE PETITION E.A.1891/03 ON THE FILE OF THE MUNSIF COURT, THIRUVANANTHAPURAM DATED 15.8.2003.

EXT.P4: TRUE COPY OF THE PETITION E.A.NO.773/04 IN E.P.94/2001 DT. 7.7.04.

EXT.P5: TRUE COPY OF THE ORDER IN E.A.773/04 IN E.P.94/01 IN O.S.NO.17/67 DATED 9.9.2004.

PIUS C. KURIAKOSE,J.

W.P.(C) Nos.29795 & 33795 of 2004

Dated: 28th May, 2007

JUDGMENT

Two obstructors/claimants not parties to the suit which stands decreed for delivery of immovable property are challenging the order of the execution court appointing an Advocate Commissioner and also a Surveyor to assist the Amin while effecting delivery of the decree schedule property to the respondent-decree-holder.

2. Mr.V.Philip Mathews, counsel for the petitioner in W.P.C.No.33795 of 2004, one of the obstructors submitted that if the impugned order (Ext.P7 in W.P.C.No.33795 of 2004) is allowed to stand, his client, the petitioner stands the risk of being evicted from that portion of the decree schedule property over which she has kudikidappu rights. I do not think so. It has been clarified by the learned Munsiff himself in the order that the houses and the three cents which are subject matters of E.A.1184/03 and E.A.1891/03 (the obstruction petitions filed by the petitioners in the Writ Petitions) will be specifically demarcated and shown in the plan. Learned counsel for the respondent-decree-holder also assured me that the portions to be shown by the Advocate Commissioner will not be taken delivery on the strength of the decree which is being executed. The above

submission is also recorded. As rightly pointed out by Mr. Philip Mathews the portion under the actual occupation of the petitioner in W.P.C.No.33795 of 2004 is described in paragraph 10 of Ext.C1 Commissioner's report (Ext.P3 in W.P.C.No.33795/04). The learned Munsiff has in fact appointed the very same Commissioner and the very same Surveyor with the specific purpose of identifying that portion and also the portion occupied by the petitioner in W.P.C.No.29795 of 2004 so that they can be excluded from delivery.

The Writ Petitions are disposed of as above. No costs.

srd

PIUS C.KURIAKOSE, JUDGE